

CONSENT AND THE PURSUIT OF AUTONOMY

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Professor Nancy S. Kim's book¹ provides a carefully considered theory of consent and a plethora of specific, useful applications thereof. This response to Professor Kim's valuable contribution will focus on some elements of the former, to the exclusion of the latter. In particular, this response attends to the crucial, but vexed, idea of autonomy and its relation to consent.

Professor Kim's project begins with recognizing an uncertainty or ambiguity in the idea of consent. Consent may refer to a subjective state of mind,² or to a legal or moral justification for some act.³ Consent often, but not always,⁴ is thought to require some form of communicated manifestation.⁵ What, precisely, is being communicated is a bit tricky. Presumably it cannot be the consent itself that is being communicated, as the communicating is often thought to be a constitutive part of the consent. But perhaps one might say, however curiously, that consent is what it is only by virtue of being expressed or communicated, or by being made manifest⁶

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1. NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* (2019).

2. *See id.* at 5.

3. *See id.*

4. The relevance for consent of both a particular subjective state of mind and of some sufficient manifested communication is contested by the philosophers. *See, e.g.*, PETER WESTEN, *THE LOGIC OF CONSENT: THE DIVERSITY AND DECEPTIVENESS OF CONSENT AS A DEFENSE TO CRIMINAL CONDUCT* (Routledge 2016) (2004); Larry Alexander et al., *Consent Does Not Require Communication: A Reply to Dougherty*, 44 *LAW & PHIL.* 1 (2016); Tom Dougherty, *Yes Means Yes, Consent As Communication*, 43 *PHIL. & PUB. AFF.* 224 (2015). These contrasting views refer to Heidi M. Hurd, *The Moral Magic of Consent*, 2 *LEGAL THEORY* 121 (1996); Larry Alexander, *The Moral Magic of Consent* (II), 2 *LEGAL THEORY* 165 (1996); and Larry Alexander, *The Ontology of Consent*, 55 *ANALYTIC PHIL.* 102 (2014).

5. *See* NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* 9 (2019).

6. By analogy, perhaps one could say that there is nothing as a genuine promise that has not yet been somehow conveyed or communicated.

Consent in the law is then analyzed as typically dependent upon three required conditions.⁷ These conditions include sufficient kinds and degrees of knowledge, including information and understanding;⁸ voluntariness, including intentionally and uncoerced desire;⁹ and intentional manifestation, as noted above.¹⁰ As we explore each of these requirements, it becomes evident that consent has a “contextual, incremental, and variable nature.”¹¹ And even if it is possible to validly consent to a particular activity, the societal harms of that activity may still outweigh its social benefits. If so, the activity in question is referred to by Professor Kim as non-consentable.¹² Consentability is, again, contextualized, and requires considering the positive and negative externalities flowing from a given proposed transaction.¹³

Both consent and consentability crucially implicate the idea of autonomy.¹⁴ Thus “[c]onsent is concerned with the autonomy of a particular individual,”¹⁵ while “consentability is concerned with society’s interest in individual autonomy as a value.”¹⁶ Lying somewhere between a narrowly individual and atomistic perspective and a broad concern for the interests of third parties and society in general is what is often referred to as a “relational” autonomy.¹⁷ Relational autonomy seeks to preserve what is important about autonomy, but based on a non-atomistic—and essentially socially embedded—mutual dependence.¹⁸

7. See NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* 9 (2019).

8. See *id.*

9. See *id.*

10. See *id.*

11. See *id.* at 8.

12. See NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* 49 (2019).

13. See *id.*

14. See, e.g., *id.* at 74, 21.

15. *Id.* at 218.

16. *Id.* (emphasis in the original).

17. See generally Natalie Stoljar, *Informed Consent and Relational Concepts of Autonomy*, 36 J. MED. & PHIL. 375 (2011); Andrea C. Westlund, *Rethinking Relational Autonomy*, 24 HYPATIA 26 (2009); Catriona MacKenzie, *Relational Autonomy, Normative Authority and Perfectionism*, 39 J. SOCIAL PHIL. 512 (2008); John Christman, *Relational Autonomy, Liberal Individualism, and the Social Constitution of Selves*, 117 PHIL. STUD. 143 (2004); Natalie Stoljar, *Feminist Perspectives on Autonomy*, STAN. ENCYCLOPEDIA PHIL. (Dec. 11, 2018), <http://plato.stanford.edu/entries/feminism-autonomy>.

18. See Natalie Stoljar, *Informed Consent and Relational Concepts of Autonomy*, 36 J. MED. & PHIL. 375 (2011); Andrea C. Westlund, *Rethinking Relational Autonomy*, 24 HYPATIA 26 (2009); Catriona MacKenzie, *Relational Autonomy, Normative Authority and Perfectionism*, 39 J. SOCIAL PHIL. 512 (2008); John Christman, *Relational Autonomy, Liberal Individualism, and the Social Constitution of Selves*, 117 PHIL.

The importance of autonomy for Professor Kim's analysis of consent and consentability is clear. Consent is variously instrumental to the crucial value of autonomy. Thus "consent is a tool of individual autonomy."¹⁹ Consent is to operate in such a way as to "promote,"²⁰ to "safeguard,"²¹ to protect,²² and to implement²³ the crucial value of autonomy.

While the importance of the idea of autonomy to Professor Kim's project is clear, much inevitably depends upon the meaning and substance of an individual's particular understanding of autonomy. In general, the nature of autonomy is currently murky and contested.²⁴ Helpfully, Professor Kim offers a specification of her main intended use.

In particular, Professor Kim parses the variety of established meanings of autonomy²⁵ and distills a recurring assumption that "autonomy means the power to act and the power not to act, according to one's desires. Autonomy thus means freedom to as

STUD. 143, 143 (2004) (referring to "a free, self-governing agent who is also socially constituted and who possibly defines her basic value commitments in terms of interpersonal relations and mutual dependencies"); Natalie Stoljar, *Feminist Perspectives on Autonomy*, STAN. ENCYCLOPEDIA PHIL. (Dec. 11, 2018), <http://plato.stanford.edu/entries/feminism-autonomy>.

19. NANCY S. KIM, CONSENTABILITY: CONSENT AND ITS LIMITS 218 (2019) ("[t]he purpose of consent is to empower individuals, to give them a tool with which to exercise autonomy and maximize their self-interest").

20. *Id.* at 51, 53.

21. *Id.* at 53.

22. *See id.*

23. *See id.*

24. For a sense of the leading contemporary approaches, see ANDREW SNEDDON, AUTONOMY 122-23 (2013) ("autonomy of choice" versus "autonomy of person"); Marina Oshana, *How Much Should We Value Autonomy?*, in AUTONOMY 99-100 (Ellen Frankel Paul et al. eds.) (2003) (autonomy as "the condition of being self-directed, of having authority over one's choices and actions whenever these are significant to the direction of one's life"); Joel Feinberg, *Autonomy*, in THE INNER CITADEL: ESSAYS ON INDIVIDUAL AUTONOMY 32 (John Christman ed.) (Echo Point Books & Media 2014) (1989) (the autonomous person as "not merely the mouthpiece of other persons or forces"); Gerald Dworkin, *The Concept of Autonomy*, in THE INNER CITADEL: ESSAYS ON INDIVIDUAL AUTONOMY 54, 61 (John Christman ed.) (Echo Point Books & Media 2014) (1989) (autonomy as combining procedural independence in decision making with authenticity); GERALD DWORIN, THE THEORY AND PRACTICE OF AUTONOMY 108 (1988) ("autonomy is the capacity to reflect upon one's motivational structure and to make changes in that structure"); R. S. Downie & Elizabeth Telfer, *Autonomy*, 49 PHIL. 293, 293 (1971) (referring to the agent's "capacity to choose what to do," or to do or refrain from a particular act). For broad normative critique, see JASON HANNA, IN OUR BEST INTEREST: A DEFENSE OF PATERNALISM (2018); SARAH CONLEY, AGAINST AUTONOMY: JUSTIFYING COERCIVE PATERNALISM (2013).

25. *See* NANCY S. KIM, CONSENTABILITY: CONSENT AND ITS LIMITS 53-54 (2019).

well as freedom from.”²⁶ From among the available definitions, Professor Kim settles, for her purposes, upon autonomy as the “freedom to move, act[,] or think without assistance or constraint.”²⁷ Generally, “a decision which provides more opportunities and options for the consentor enhances autonomy, while one which reduces them diminishes autonomy.”²⁸ This approach is then explicitly contrasted with those emphasizing “self-actualization.”²⁹

What, then, should be said about both Professor Kim’s approach to the crucial value of autonomy in the contexts of consent and consentability, and about the value of autonomy more generally? Professor Kim’s approach is well-considered and taps into important matters of continuing controversy.

First, consider Professor Kim’s claim that, in general, a decision that increases one’s opportunities and options increases that decision maker’s autonomy.³⁰ This raises intriguing questions of how to count or otherwise quantify one’s opportunity and options, and of the extent to which one’s freedom or autonomy can be reduced to matters of number, quantity, and commensurability. Theorists are currently divided on the extent to which greater and lesser freedom can be measured or, in particular, reduced to enumeration or other forms of quantification. Underlying questions of how to count the number of properly distinguishable actions that persons can perform under given circumstances currently remain unresolved.

Thus some contemporary writers, such as Ian Carter, tend to emphasize empirical or quantitative dimensions in measuring degrees of freedom.³¹ Other writers, such as Matthew Kramer,

26. NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* 54 (2019) (emphasis in the original). It has been suggested that freedom itself always involves a triadic relation among an actor who may be free from socially imposed restraints on action and choice to do or not do some particular action. See Gerald C. MacCallum, Jr., *Negative and Positive Freedom*, 76 *PHIL. REV.* 312 (1967). Actions in accordance with one’s desires of course raise the problem of implanted, rationalized, or adaptive preferences. See, e.g., Ben Colborn, *Autonomy and Adaptive Preferences*, 23 *UTILITAS* 2 (2011) (discussing the approach toward the important idea of adaptive preferences classically taken in JON ELSTER, *SOUR GRAPES* (1983)).

27. NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* 74 (2019) (emphasis omitted); see also *id.* at 57 n.181, 134.

28. *Id.* at 74.

29. *Id.*

30. See *supra* text accompanying note 27.

31. See IAN CARTER, *A MEASURE OF FREEDOM* ch. 7 (1999) (defending *id.* at 170, an “empirical approach to measuring freedom . . . according to which the extent of my

tend to emphasize evaluative or normative elements of our assessments that one person or one political system is freer than another.³² Perhaps the classic statement of a valuational emphasis in comparing degrees of freedom is that of Felix Oppenheim.³³ Professor Oppenheim argued in particular that

If we believe that there is greater liberty in the United States than in Soviet Russia, it is not . . . because United States citizens are subject to fewer regulations than Soviet citizens, but because we are freer in those respects we value most. The concept of a free society is, thus, essentially a valuational one.³⁴

Or consider a hypothetical case intended to shed light on greater and lesser degrees of both freedom and autonomy. Imagine two persons or the same person on two separate occasions. In the first scenario, a person is invited to devote the next fifteen minutes to consuming any one of seven available desserts, or else having none of the desserts, and patiently waiting instead for the expiration of the fifteen minutes. The person, as it happens, finds one or two of the desserts to be distinctly appealing. Other desserts are simply less attractive. And one of the desserts in particular the person knows herself to be allergic to.

In the second scenario, the person has the same fifteen minutes to cast a meaningful ballot in favor of one of the five currently relevant political parties, all with varying ideological agendas, and with all of whom the choosing person has some familiarity. Choosing not to vote is also an option. We assume that the chooser in both the dessert scenario and in the voting scenario has meaningful reasons for preferring at least some alternatives to others.

Perhaps we want to say that, all else equal under ordinary circumstances, the chooser in the political voting scenario is freer

freedom is a function of the extent of action available to me, in 'sheer quantitative terms'); see also Hillel Steiner, *How Free?: Computing Personal Liberty*, in *OF LIBERTY* 73 (A. Phillips-Griffiths ed. 1983).

32. See MATTHEW H. KRAMER, *THE QUALITY OF FREEDOM* ch. 5 (2003) (arguing, *id.* at 425, that "to omit the evaluative component altogether is to misconstrue the import of the 'how free' question"); *id.* at 472 ("the level of each person's overall liberty is partly determined by evaluative consideration"); see also WILL KYMLICKA, *CONTEMPORARY POLITICAL PHILOSOPHY* 142-44 (2d ed. 2001) (distinguishing the number of impairments or exercises of freedom from the value of any such impairment or exercise).

33. FELIX E. OPPENHEIM, *DIMENSIONS OF FREEDOM: AN ANALYSIS* 207 (1961).

34. *Id.*

overall than the chooser in the dessert scenario. Perhaps we want to say that the two are, all else equal, equally free. Or perhaps we want to say that we simply cannot tell which of the two is freer. The one assessment, however, that most of us would be unlikely to make is that the dessert chooser is freer than the voter because the dessert chooser has a total of seven options, plus not choosing a dessert, whereas the voter has merely five, or two fewer, options in voting or else choosing to not vote at all. And this seems so even though the dessert choices vary significantly in their value and degree of appeal to the chooser.

But this hypothetical focuses on questions of greater and lesser freedom. Can we say anything specifically about chooser autonomy, and degrees of autonomy, under the above two scenarios? What we want to say about any greater or lesser overall autonomy of either the dessert chooser or the voter must, inescapably, depend on our understandings of the complex idea of autonomy.³⁵

Consider, with a few further simplifying assumptions, what the classical theorist of autonomy Immanuel Kant³⁶ might be willing to say about our two distinct choice scenarios. Famously, Kant argued that the autonomous will

is a kind of causality belonging to living beings insofar as they are rational. Freedom [or autonomy] would then be the property this causality [of reason] has of being able to work independently of determination by alien [or any merely physical or biological] causes; just as natural necessity is a property characterizing the causality of all non-rational beings.³⁷

On Kant's view of autonomy, it would seem reasonable to deny that choosing among any number of desserts reflecting one's decisively biologically-derived, if also culturally shaped, appetites

35. See *supra* text accompanying notes 13-28.

36. See, e.g., IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* (H.J. Paton trans., 1948) (Harper 1964) (1785).

37. *Id.* at 114; see also *id.* ("w]hat else can freedom of will be but autonomy—that is, the property which will has of being a law to itself"); *id.* at 116 ("[r]eason must look upon itself as the author of its own principles independently of alien [including physiological or drive-based] influences"). For commentary, see CHRISTINE M. KORSGAARD, *CREATING THE KINGDOM OF ENDS* 25 (1996) ("[f]ree will and autonomy for Kant thus require that the will be able to act in complete independence of any prior or concurrent causes other than our own will or practical reasoning") (emphasis in the original).

would ordinarily qualify as autonomous.³⁸ In contrast, it seems possible to ascribe autonomy to a rational will that selects among a limited number of political parties if that choice reflects a rationally unverbalizable underlying maxim or principle.³⁹ Thus on Kant's approach, it seems possible to reflect, exercise, or enhance one's autonomy largely in part from the sheer number of available opportunities and options.

Second, let us briefly consider Professor Kim's emphasis on autonomy as a "freedom to move, act[,] or think without assistance or constraint."⁴⁰ Perhaps we would say that a person whose choice has then been deliberately thwarted by outside actors is thereby made less autonomous. What if those outside actors have, to some degree, impaired or constrained the fulfillment of a person's otherwise autonomous choice, but in the end the chooser has overcome the constraint and herself prevailed? Is the choice less autonomous than it otherwise might have been? Is the chooser not only less free but less autonomous as well?

Or consider the variety of possible forms of "assistance"⁴¹ and their effects on one's autonomy. We can imagine, say, an exhausted runner who wishes to finish a marathon, but who cannot do so unless she is physically carried across the finish line by outside parties. Perhaps such assistance, especially if not requested, would count against the runner's autonomy. But would we also be willing to say that an otherwise autonomous chooser is less than fully autonomous because of the assistance, solicited or not, of all of the persons who have more generally somehow assisted the mature chooser in developing the very capacity for making an (otherwise) autonomous choice? Must the developmental assistance at an advanced level of a responsible teacher, mentor, or role model compromise, overall or on balance, our autonomy? Or suppose two persons would like to canoe across a river, but both realize they cannot successfully cross the river without the active cooperative assistance of the other person. Does their mutual assistance impair their individual autonomy? Oddly, both parties seem to be empowered through their transaction, and overall as free as before, if not freer. But both persons would, on the present view, appear to become relevantly less autonomous

38. See *supra* note 36 and accompanying text.

39. See *supra* note 36 and accompanying text.

40. NANCY S. KIM, CONSENTABILITY: CONSENT AND ITS LIMITS 74 (2019) (emphasis added).

41. *Id.*

precisely in assisting or, more precisely, in accepting or depending upon the arguably liberating assistance of the other.

It would thus seem that some instances of assistance may impair our autonomy, but that other instances of assistance may not. We would thus need some way to distinguish autonomy-impairing assistance from autonomy-non-impairing assistance. But if we have such a clarifying definition of autonomy, it is then unclear why we would need to bring any reference to assistance⁴² into the definition of autonomy at all.⁴³

Beyond definitional matters, Professor Kim rightly emphasizes the importance of the individual interest,⁴⁴ as well as the collective interest,⁴⁵ in protecting the autonomy of the future⁴⁶ self. The focus is on the freedom of “the consentor’s future self to move, act, or think without assistance or constraint.”⁴⁷ Acts of at least apparent consent may lead to profound regret and to significant damage to the chooser’s future autonomy.⁴⁸

Doubtless both the individual and the society have an interest in preventing regrettable forfeitures of future autonomy. A single crucial choice may indeed irrevocably impair one’s autonomy for one’s remaining lifetime. We all have multiple important interests, some of which may be mutually incompatible. But among our most important such interests, some would hold, is our interest in sustaining autonomy itself.

Consider, though, some of the complications presented by the classic George Bernard Shaw dramatized version of the trial of Joan of Arc.⁴⁹ Shaw’s Joan vividly raises many fundamental

42. It is also possible that some instances of constraint may actually enhance both freedom and autonomy, as is often thought to be true in the case of Mill’s classic hypothetical discussion of a traveler on foot and an unsafe bridge in JOHN STUART MILL, *ON LIBERTY* ch. 5, at 166 (Gertrude Himmelfarb ed. 1974) (1859).

43. Professor Kim’s approach to autonomy also disclaims a focus on self-actualization. See NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* 74 (2019). This usefully holds open the possibility that someone could choose and act autonomously, yet fail, for reasons unrelated to autonomy, to fulfil what that chooser, or some outside observer, might think of as the chooser’s highest and best potential.

44. See *id.* at 69, 81, 84.

45. See *id.* at 69, 84, 88-89.

46. See *id.* at 57, 81, 134.

47. *Id.* at 134.

48. NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* 57 (2019).

49. See GEORGE BERNARD SHAW, *SAINT JOAN* (Dan H. Laurence ed.) (Penguin Books 2003) (1924). For a detailed report, see *Trial of Condemnation*, JOAN OF ARC, www.saint-joan-of-arc.com/trial-condemnation.htm (W.P. Barrett trans.).

questions about the meaning, role, and value of autonomy in a life well- and authentically lived.

Shaw's Joan asserts at her trial the autonomy of her own judgment.⁵⁰ But Joan's decisions reflect what she is supposedly commanded to do,⁵¹ by angelic voices heard by no one but Joan.⁵² When it is suggested that Joan's commanding voices emanate from her imagination,⁵³ Joan responds that God typically communicates in just that specific fashion.⁵⁴

On the world's accounting, Joan's decision making is pathologized and delusional, and thus hardly autonomous. She acts, it is widely thought, out of naivete and ignorance,⁵⁵ both of which typically amount to fundamental barriers to meaningful autonomy.⁵⁶ Joan does not act, ultimately, in such a way as to hold open over time a range of earthly future options and opportunities.⁵⁷ Joan ultimately reduces her range of future choices down to zero.⁵⁸

In all this, Joan seems far removed from exercising genuine autonomy. But on the other hand, the idea of severe regret⁵⁹ for one's decisive and irrevocable choice may here seem rather out of place. Joan does not seem to consistently regret the status of sainthood, whatever the earthly price paid.⁶⁰ We might even think of Joan's decision making as involving her present thoughtful, not-merely-adaptive, autonomous deference to her perceived epistemic authority,⁶¹ in the form crucially of God's authority over his

50. See GEORGE BERNARD SHAW, SAINT JOAN scene VI, at 136 (Dan H. Laurence ed.) (Penguin Books 2003) (1924) ("Cauchon: 'And you and not the Church, are to be the judge?' Joan: 'What other judgment can I judge by but my own?'"); but see sources cited *infra* note 60.

51. See GEORGE BERNARD SHAW, SAINT JOAN 136 (Dan H. Laurence ed.) (Penguin Books 2003) (1924).

52. See *id.* at 68, 136.

53. See *id.* at scene I, at 68.

54. See *id.*

55. See *id.* at scene VI, at 145 ("The Inquisitor: 'She did not understand a word we were saying. It is the ignorant who suffer.'").

56. Note as well the requirements of sufficient knowledge, understanding, and relevant information for the existence of meaningful consent. See *supra* note 7 and accompanying text.

57. See *supra* note 27 and accompanying text.

58. See *supra* note 45-46 and accompanying text.

59. See *supra* note 47 and accompanying text.

60. See GEORGE BERNARD SHAW, SAINT JOAN 160-61 (Dan H. Laurence ed.) (Penguin Books 2003) (1924).

61. For background, see Linda Zagzebski, *Epistemic Authority*, 53 EPISTEMOLOGY

Church.⁶² Joan is thoughtfully assigning degrees of merited and appropriate epistemic authority, trusting in her judgments in that respect,⁶³ sharply limiting her earthly future options,⁶⁴ and submitting to what she arguably takes to be the most trustworthy, benevolent, and authoritative relevant commands. In important respects, Joan's decision to go to the stake seems less than fully autonomous. But Joan also seems to act on carefully and authentically adopted and freely⁶⁵ endorsed reasons central to a coherent, continuing,⁶⁶ and stable, if tragic, character.⁶⁷

This discussion of Shaw's Joan of Arc is, on its own terms, focused on the idea of autonomy. And Professor Kim rightly takes autonomy to be central to any broader discussion of consent. It remains only to point out that the problems of autonomy strikingly illustrated in Joan's definitive moments of crucial choice are, as well, barely disguised fundamental problems of consentability and of consent, if indeed disguised at all.⁶⁸ If we think of Joan's

& PHIL. 92 (2017); LINDA TRINKAUS ZAGZEBSKI, *EPISTEMIC AUTHORITY: A THEORY OF TRUST, AUTHORITY, AND AUTONOMY IN BELIEF* (2012); Robert Pierson, *The Epistemic Authority of Expertise*, 1994 PHIL. SCI. 398 (1994). See also R. George Wright, *Epistemic Peerhood in the Law*, 91 ST. JOHN'S L. REV. 663 (2017). These authorities discuss the compatibilities as well as the conflicts between autonomy and acknowledging relevant epistemic superiority in a given context.

62. Thus in Joan's case: "The Inquisitor: 'If the Church Militant tells you that your revelations and visions are sent by the devil . . . will you not believe that the Church is wiser than you?' Joan: 'I believe that God is wiser than I; and it is His Commands that I will do.'" See GEORGE BERNARD SHAW, *SAINT JOAN* scene VI, at 135 (Dan H. Laurence ed.) (Penguin Books 2003) (1924).

63. See R. George Wright, *Epistemic Peerhood in the Law*, 91 ST. JOHN'S L. REV. 663 (2017); Linda Zagzebski, *Epistemic Authority*, 53 *EPISTEMOLOGY & PHIL.* 92 (2017); LINDA TRINKAUS ZAGZEBSKI, *EPISTEMIC AUTHORITY: A THEORY OF TRUST, AUTHORITY, AND AUTONOMY IN BELIEF* (2012); Robert Pierson, *The Epistemic Authority of Expertise*, 1994 PHIL. SCI. 398 (1994).

64. See *supra* text accompanying notes 27, 45-46. Somehow commensurating the loss of autonomy associated with a broadly open (earthly) future with a single momentous and inescapable decision to embrace the path of sainthood is rather a daunting task.

65. Professor Kim refers to free will issues in NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* 73 (2019). Joan's elaborate metaphysics creates its own problems of free will but allows her to bypass the limitations of sheer materialism. See, e.g., Daniel Stoljar, *Physicalism*, STAN. ENCYCLOPEDIA PHIL. (March 9, 2015), <https://plato.stanford.edu/entries/physicalism>.

66. On the problem of reducing apparent persons to mere discontinuous selves, see NANCY S. KIM, *CONSENTABILITY: CONSENT AND ITS LIMITS* 73-74 (2019). See also Mary Midgley, *ARE YOU AN ILLUSION?* (2014).

67. And thus in these respects apparently autonomous, on mainstream accounts. See, e.g., Laura Waddell Ekstrom, *A Coherence Theory of Autonomy*, 53 PHIL. & PHENOMENOLOGICAL RES. 599, 599, 614-15 (1993); sources cited *supra* note 23.

68. Joan is being repeatedly asked whether she wishes to consent to the dictates of

circumstances explicitly in terms of consent, and consentability, rather than in terms specifically of autonomy, the basic problems noted above are largely re-inscribed in those contexts. In any event, Professor Kim deserves our commendation for her broad-range theoretical contributions, as well as for her multiple specific applications of those contributions.

earthly hierarchies, religious or temporal, and to respect their binding authority. The consent-based approach to legal and political authority is traditionally central. *See, e.g.,* THE SOCIAL CONTRACT THEORISTS: CRITICAL ESSAYS ON HOBBS, LOCKE, AND ROUSSEAU (Christopher W. Morris ed., 1998). For a contemporary defense, *see* Harry Beran, THE CONSENT THEORY OF POLITICAL OBLIGATION (1987).
